

AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT is entered into the ___ day of _____, 20__, by and between the CITY OF BENBROOK, TEXAS, hereinafter referred to as “CITY” and Freese and Nichols, Inc. hereinafter referred to as “CONSULTANT”.

WHEREAS, CITY desires CONSULTANT to perform certain work and Services set forth in Scope of Services, marked Exhibit “A”, and attached hereto and incorporated herein.

WHEREAS, the CONSULTANT has expressed a willingness to perform said work and Services, hereinafter referred to only as “Services”, specified in said Scope of Services, and enumerated under Article II of this Agreement.

NOW, THEREFORE, all parties agree as follows:

ARTICLE I **GENERAL**

CONSULTANT shall furnish and pay for all labor, tools, materials, equipment, supplies, transportation and management necessary to perform all Services set forth in Article II hereof for the CITY in accordance with the terms, conditions and provisions of the Scope of Services, marked Exhibit “A”, and attached hereto and incorporated herein for all purposes. CITY may, at any time, stop any Services by the CONSULTANT upon giving CONSULTANT written notice. CONSULTANT shall be bound to CITY by the terms, conditions and responsibilities toward the CITY for CONSULTANT’S Services set forth in this Agreement.

ARTICLE II

SERVICES

A. The following Services, when authorized in writing by a Notice to Proceed, shall be performed by the CONSULTANT in accordance with CITY requirements:

PERFORMANCE OF THE “GENERAL ENGINEERING CONSULTING SERVICES” DESCRIBED IN THE SCOPE OF SERVICES MARKED EXHIBIT “A”.

B. CONSULTANT shall be responsible for the professional quality, technical accuracy, and the coordination of all Services furnished by CONSULTANT under this Agreement. CONSULTANT shall, without additional compensation, correct or revise any errors or deficiencies in Services.

C. Neither CITY review, approval or acceptance of, no payment for any of the Services required under this Agreement, shall be construed to operate as a waiver if any rights under this Agreement or if any cause of action arising out of the performance of this Agreement, and CONSULTANT shall be and remain liable to CITY in accordance with applicable law for all damages to CITY caused by CONSULTANT’S negligent performance of any of the Services furnished under this Agreement.

D. The rights and remedies of CITY under this Agreement are as provided by law.

ARTICLE III

PAYMENT

A. CITY shall pay CONSULTANT on the basis herein described, subject to additions or deletions for changes or extras agreed upon in writing.

B. Payment will be as stipulated in Exhibit “B” attached hereto and incorporated herein.

C. Upon complete performance of this Agreement by CONSULTANT and final approval and acceptance of CONSULTANT'S Service by CITY, CITY will make final payment to CONSULTANT of the balance due under this Agreement within thirty (30) days of the following month after final payment for such Services has been billed by CONSULTANT.

D. CITY may deduct from any amounts due or to become due to CONSULTANT any sum or sums owing by CONSULTANT to CITY. In the event of any breach by CONSULTANT of any provision or obligation of this Agreement, or in the event of the assertion by other parties of any claim or lien against CITY, or the CITY'S premises, arising out of CONSULTANT'S performance of this Agreement, CITY shall have the right to retain out of any payments due or to become due to CONSULTANT an amount sufficient to completely protect the CITY from any and all loss, damage or expense therefrom, until the breach, claim or lien has been satisfactorily remedied or adjusted by the CONSULTANT.

ARTICLE IV **TIME FOR PERFORMANCE**

CONSULTANT shall perform all Services as provided for under this Agreement in a proper, efficient and professional manner in accordance with the CITY'S requirements. Both parties have agreed to the provisions of this Agreement in anticipation of the orderly and continuous progress of the project through completion of the Scope of Services specified in Exhibit "A", attached hereto.

ARTICLE V
DOCUMENTS

A. All instruments of Service prepared under this Agreement shall be submitted for approval of the CITY.

B. Such documents of Service, together with necessary supporting documents, shall be delivered to CITY, and CITY shall have unlimited rights, for the benefit of CITY, in all instruments of Service, including the right to use same on any other work of CITY without additional cost to CITY. If, in the event CITY uses such instruments of Service on any work of CITY other than that specified in the Scope of Services, attached as Exhibit "A", provided CONSULTANT completed this Agreement, under those circumstances CITY hereby agrees to protect, defend, indemnify and hold harmless the CONSULTANT, their officers, agents, servants and employees, from and against suits, actions, claims, losses, liability or damage of any character, and from and against costs and expenses, including, in part, attorney fees incidental to the defense of such suits, actions, claims, losses, damages or liability on account of injury, disease, sickness, including death, to any person or damage to property including, in part, the loss of use resulting therefrom, arising from any inaccuracy, such use of such instruments of Service with respect to such other work except where CONSULTANT participates in such other work.

C. CONSULTANT agrees to and does hereby grant to CITY a royalty-free license to all such instruments of Service which CONSULTANT may cover by copyright and to all designs as to which CONSULTANT may assert any rights or establish any claim under the design patent or copyright laws. CONSULTANT, after completion of the project, agrees to furnish the originals of all such instruments of Service to the CITY.

ARTICLE VI

TERMINATION

A. CITY or the CONSULTANT may suspend or terminate this Agreement for cause or without cause at any time by giving written notice to the CONSULTANT or CITY, whichever applies. In the event suspension or termination is without cause, payment to the CONSULTANT, in accordance with the terms of this Agreement, will be made on the basis of Services reasonably determined by CITY to be satisfactorily performed to date of suspension or termination. Such payment will be due upon delivery of all instruments of service to CITY.

B. Should the CITY require a modification of its contract with CONSULTANT, and in the event CITY and CONSULTANT fail to agree upon a modification to this Agreement, CITY or the CONSULTANT shall have the option of terminating this Agreement. Payment to CONSULTANT shall be made by the CITY in accordance with the terms of this Agreement, for the Services mutually agreed upon by the CITY and the CONSULTANT to be properly performed by the CONSULTANT prior to such termination date.

ARTICLE VII

INSURANCE

A. CONSULTANT shall provide and maintain Workers Compensation with statutory limits.

B. CONSULTANT shall provide and maintain in full force and effect during the time of this Agreement, auto insurance (including, but not limited to, insurance covering the operation of owned and non-owned automobiles, trucks and other vehicles) protecting CONSULTANT and CITY as an additional Insured with limits not less than 250/500/100,000.

C. CONSULTANT shall provide general Liability Insurance. Such insurance covering personal and bodily injuries or death shall be in the sum of not less than Two Hundred

Fifty Thousand Dollars (\$250,000.00) per occurrence and Five Hundred Thousand Dollars (\$500,000.00) aggregate. Insurance covering damages to property shall be in the sum of not less than One Hundred Thousand Dollars (\$100,000.00). The general Liability Insurance must name the CITY as an additional insured.

D. CONSULTANT shall also provide and maintain Professional Liability Errors and Omissions Insurance coverage to protect CONSULTANT and CITY from liability arising out of the performance of professional Services, if any, under this Agreement. Such coverage shall be in the sum of not less than Three Hundred Thousand Dollars (\$300,000.00) per occurrence and Five Hundred Thousand Dollars (\$500,000.00) aggregate. Such insurance shall be kept in effect for four years after the completion of the contract. If CONSULTANT fails to maintain the insurance covered during that time, CITY may pay the premiums to keep the insurance in effect and recover the cost from CONSULTANT.

E. A signed Certificate of Insurance, satisfactory to CITY, showing compliance with the requirements of this Article shall be furnished to CITY before any Services are performed. CONSULTANT shall provide thirty (30) days written notice to CITY prior to the cancellation or modification of any insurance referred to herein.

ARTICLE VIII **INDEMNIFICATION FOR INJURY AND PERFORMANCE**

CONSULTANT further specifically obligates itself to CITY in the following respects, to-wit:

The CONSULTANT hereby agrees to protect, indemnify and hold harmless the CITY, their officers, agents, servants and employees (hereinafter individually and collectively referred to as "Indemnitees"), from and against suits, actions, claims, losses, liability or damage of any character, and from and against costs and expenses, including, in part, attorney fees incidental to

the defense of such suits, actions, claims, losses, damages or liability on account of injury, disease, sickness, including death, to any person or damage to property including, in part, the loss of use resulting therefrom, arising from any negligent act, error, or omission of the CONSULTANT, its officers, employees, servants, agents or subcontractors, or anyone else under the CONSULTANT'S direction and control, and arising out of, resulting from, or caused by the performance or failure of performance of any work or Services called for by this Agreement, or from conditions created by the performance or non-performance of said work or Services. In the event one or more of the Indemnitees is determined by a court of law to be jointly or derivatively negligent or liable for such damage or injury, the CONSULTANT shall be obligated to indemnify Indemnitee(s) as provided herein on a proportionate basis in accordance with the final judgment, after all appeals are exhausted, determining such joint or derivative negligence or liability.

The CONSULTANT is not responsible for the actions of the CITY'S contractor to perform the construction of the improvements covered under this Agreement.

Acceptance and approval of the final plans by the CITY shall not constitute nor be deemed a release of this responsibility and liability of CONSULTANT, its employees, associates, agents, and consultants for the accuracy or competency of their designs, working drawing and specifications, or other documents and work; nor shall such approval be deemed to be an assumption of such responsibility by the CITY for any defect in the designs, working drawings and specifications, or other documents prepared by CONSULTANT, its employees, contractor, agents and consultants.

ARTICLE IX **ASSIGNMENT**

CONSULTANT shall not assign or sublet this Agreement or any part thereof, without the written consent of CITY. Sale of more than fifty percent (50%) ownership of CONSULTANT shall be construed as an assignment.

ARTICLE X **APPLICABLE LAWS**

CONSULTANT shall comply with all Federal, State, County and Municipal laws, ordinances, regulations, safety orders, resolutions and building codes, including the Americans with Disabilities Act, relating or applicable to Services to be performed under this Agreement.

This Agreement is performable in the State of Texas and shall be governed by the laws of the State of Texas. Venue on any suit hereunder shall be in Tarrant County, Texas.

ARTICLE XI **DEFAULT OF CONSULTANT**

In the event CONSULTANT fails to comply or becomes disabled and unable to comply with the provisions of this Agreement as to the quality or character of the service or time of performance, and the failure is not corrected within ten (10) days after written notice by CITY to CONSULTANT, CITY may, at its sole discretion without prejudice to any other right or remedy:

A. Terminate this Agreement and be relieved of the payment of any further consideration to CONSULTANT except for all work determined by CITY to be satisfactorily completed prior to termination. In the event of such termination, CITY may proceed to complete the Services in any manner deemed proper by CITY, either by the use of its own forces or by resubmitting to others. In either event, the CONSULTANT shall be liable for all costs in excess of the total contract price under this Agreement incurred to complete the Services herein provided for and the costs so incurred may be deducted and paid by the owner out of such monies as may

be due or that may thereafter become due to CONSULTANT under and by virtue of this Agreement.

B. CITY may, without terminating this Agreement or taking over the Services, furnish the necessary materials, equipment, supplies and/or help necessary to remedy the situation, at the expense of the CONSULTANT.

ARTICLE XII

ADJUSTMENTS IN SERVICES

No claims for extra Services, additional Services or changes in the Services will be made by CONSULTANT without a written agreement with CITY prior to the performance of such Services.

ARTICLE XIII

EXECUTION BECOMES EFFECTIVE

This Agreement will be effective upon execution of the contract by and between CONSULTANT and CITY.

ARTICLE XIV

AGREEMENT AMENDMENTS

This Agreement contains the entire understanding of the parties with respect to the subject matter hereof and there are no oral understandings, statements or stipulations bearing upon the meaning or effect of this Agreement which have not been incorporated herein. This Agreement may only be modified, amended, supplemented or waived by a written instrument executed by the parties except as may be otherwise provided therein.

ARTICLE XV

GENDER AND NUMBER

The use of any gender in this Agreement shall be applicable to all genders, and the use of singular number shall include the plural and conversely.

ARTICLE XVI
NOTICES AND AUTHORITY

A. The CONSULTANT agrees to send all notices required under this Agreement to City Manager, City of Benbrook, 911, Winscott Rd, Benbrook, Texas 76126. The CONSULTANT understands that only the City Manager or his designee has the authority to represent the CITY or bind the CITY under this Agreement.

B. The CITY agrees to send all notices required under this Agreement to the CONSULTANT at: 801 Cherry Street, Suite 2800, Fort Worth, Texas 76102.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on this the _____ day of _____, 20__.

CITY:

CONSULTANT:

By:_____

By:_____

Title: _____

Title: _____

Exhibit A
Scope of Services
Storm Drain Asset Inventory & Assessment

The scope set forth herein defines the work to be performed by the CONSULTANT in completing the project. Both the CITY and CONSULTANT have attempted to clearly define the work to be performed and address the needs of the Project. Under this scope, “CONSULTANT” is expanded to include any sub-consultant, including surveyor, employed or contracted by the CONSULTANT.

PROJECT UNDERSTANDING

The project includes the development of GIS features for the Storm Drain System, including channels (City-owned), mains, inlets, manholes, inlets, and outfalls, based on available information and field inspection. Additionally, the project includes CCTV inspection of the City’s storm drain pipes to quantify condition and blockages of subsurface infrastructure. The project will be executed over multiple fiscal years as funding allows. The following tasks summarize the scope of work for the entire program in additional detail:

WORK TO BE PERFORMED

BASIC SERVICES

- Task 1. Project Management
- Task 2. Project Kickoff and Data Review
- Task 3. Storm Drain GIS Geodatabase and Collector App
- Task 4. Develop Multi-Year Field Inspection Work Plan
- Task 5. Perform Field Inspection
- Task 6. Prepare Storm Drain Assessment TM and Meeting

BASIC SCOPE OF SERVICES

The basic scope of services proposed for this project includes the following:

Task 1 - Project Management: CONSULTANT will manage the work outlined in this scope for efficient and effective use of CONSULTANT's and CITY's time and resources. CONSULTANT will manage change, communicate effectively, coordinate internally and externally as needed, and proactively address issues with the CITY's Project Manager and others as necessary to make progress on the work. CONSULTANT will prepare and submit monthly progress reports, baseline project schedule initially, and project schedule updates as necessary.

Task 2 –Project Kickoff Meeting: CONSULTANT will prepare and lead a project kickoff meeting with the CITY to review project scope, schedule, data request, and GIS requirements. CONSULTANT will prepare and submit the data request prior to the meeting so that sources and availability of data to support the project can be discussed at the meeting. CONSULTANT will document decisions and action items in meeting minutes, which will be submitted to the CITY's review within a week of the meeting.

Task 3 –Storm Drain GIS Geodatabase & Collector App: CONSULTANT will review the information provided by the CITY during the kickoff meeting and data provided from the data request. CONSULTANT will perform a data gap assessment to identify existing and additional data sources required to support the CITY's goals for the project. CONSULTANT will develop a draft geodatabase for storing storm drain GIS data collected as part of the project. CONSULTANT will prepare a geodatabase schema, which will include proposed feature classes, attribute fields, and attribute domains to represent the storm drain infrastructure within GIS. CONSULTANT will develop an ESRI Field Map Application to be utilized for field collection of the CITY's storm drain infrastructure. The application will allow for the collection of attribute information for each feature during the field inspection.

CONSULTANT will prepare for and lead a meeting to review the results of the data assessment, the storm drain GIS geodatabase schema, and the collector app with CITY staff. CONSULTANT will document decisions and action items in meeting minutes, which will be submitted to the CITY's review within a week of the meeting.

CONSULTANT will update the geodatabase based on feedback from the CITY during the review meeting and import available GIS data into the geodatabase. Imported GIS data will be incorporated into the collector app to serve as a reference layer during the field inspection.

Task 4 - Develop Multi-Year Field Inspection Work Plan: CONSULTANT will develop a multi-year work plan to collect the remaining storm drain infrastructure through field inspection. As part of the work plan, CONSULTANT will utilize a risk-based approach to select and prioritize storm drain mains for CCTV inspection.

Task 5 - Perform Field Inventory and Inspection: CONSULTANT will perform a field inventory and inspection of the CITY's storm drain infrastructure utilizing the previously developed collector app. The field effort will include an inventory of surface-level infrastructure in approximately 20-25% of the CITY's service area per fiscal year, as funding allows.

CONSULTANT will prepare and lead a field inspection coordination meeting each fiscal year to review inspection activities with the CITY. CONSULTANT will document observed problem areas within the inspection area where maintenance is needed. CONSULTANT will collect mapping grade spatial data and attribute information for each feature. Field inspection of outfalls will be conducted in a manner intended to satisfy the CITY's MS4 permit requirement for outfall illicit discharge, detection and elimination (IDDE) inspections. CONSULTANT will perform data review and QA/QC for the attribute information collected as part of the field inspection. The collected data will be utilized to populate the feature classes within Storm Drain GIS Geodatabase. In addition to the field inspections, beginning in Year 2, CONSULTANT will perform yearly CCTV inspections of select storm drain pipes based on the prioritized risk-based approach.

Task 6 - Prepare Yearly Assessment Summary and Meeting: CONSULTANT will prepare a memo summarizing the storm drain GIS geodatabase inventory updates, storm drain field inspection results, CCTV inspection results, risk-based assessment methodology and results, and an update of the multi-year work plan. The memo will include a summary of problem areas identified during the field inspection and recommended remedial actions. CONSULTANT will submit a digital PDF of the draft memo for the CITY's review.

CONSULTANT will prepare for and lead a meeting to review the yearly summary memo with the CITY. CONSULTANT will document decisions and action items in meeting minutes, which will be submitted to the CITY's review within a week of the meeting.

CONSULTANT will finalize the Yearly Storm Drain Assessment Program Summary Memo based on comments from the CITY during the review meeting. CONSULTANT will submit a digital PDF of the Summary Memo within two weeks of the review meeting.

ADDITIONAL SERVICES

Additional Services not included in the Scope of Services – CITY and CONSULTANT agree that the following services are beyond the Scope of Services described in the tasks above. However, CONSULTANT can provide these services, if needed, upon the CITY's written request. Any additional amounts paid to the CONSULTANT as a result of any material change to the Scope of the Project shall be agreed upon in writing by both parties before the services are performed. These additional services include the following:

1. Cleaning of pipe or other infrastructure.
2. Review, scanning, or digitization of as-builts or design sheets for storm system infrastructure.

City of Benbrook
General Engineering Consulting Services

Exhibit B

Fees

CONSULTANT shall be compensated for basic services on a lump sum basis. Special services shall be compensated on an hourly basis in accordance with the attached schedule. The total compensation is summarized as follows:

<u>BASIC SERVICES</u>	<u>EFFORT</u>
FY2021-2022	
Task 1. Project Management	\$ 9,386.00
Task 2. Project Kickoff Meeting	\$ 3,539.00
Task 3. Storm Drain GIS Geodatabase and Collector App	\$ 14,529.00
Task 4. Develop Multi-Year Field Inspection Work Plan	\$ 3,354.00
Task 5. Perform Field Inspection	\$ 40,020.00
Task 6. Prepare Yearly Assessment Summary and Meeting	\$ 4286.00
FY2021-2022 Subtotal	\$ 75,114.00
FY2022-2023	
Task 1. Project Management	\$ 5,707.00
Task 2. Annual Coordination Meeting	\$ 779.00
Task 3. Storm Drain GIS Geodatabase and Collector App	\$ 0.00
Task 4. Develop Multi-Year Field Inspection Work Plan	\$ 0.00
Task 5. Perform Field Inspection	\$ 65,563.00
Task 6. Prepare Yearly Assessment Summary and Meeting	\$ 3,219.00
FY2022-2023 Subtotal	\$ 75,268.00
FY2023-2024	
Task 1. Project Management	\$ 5,925.00
Task 2. Annual Coordination Meeting	\$ 808.00
Task 3. Storm Drain GIS Geodatabase and Collector App	\$ 0.00
Task 4. Develop Multi-Year Field Inspection Work Plan	\$ 0.00
Task 5. Perform Field Inspection	\$ 64,582.00
Task 6. Prepare Yearly Assessment Summary and Meeting	\$ 3,341.00
FY2023-2024 Subtotal	\$ 74,656.00

(Fees continued on next page)

FY2024-2025	
Task 1. Project Management	\$ 6,152.00
Task 2. Annual Coordination Meeting	\$ 838.00
Task 3. Storm Drain GIS Geodatabase and Collector App	\$ 0.00
Task 4. Develop Multi-Year Field Inspection Work Plan	\$ 00.00
Task 5. Perform Field Inspection	\$ 63,696.00
Task 6. Prepare Yearly Assessment Summary and Meeting	\$ 4,141.00
FY2024-2025 Subtotal	\$ 74,828.00
Basic Services Total:	\$ 299,866.00
Project Total:	\$ 299,866.00
Contract Total:	\$ 299,866.00

Invoicing

CONSULTANT may submit invoices for Services rendered no more frequently than monthly, accompanied by an explanation of the Services provided and any necessary supporting documentation.

City of Benbrook
General Engineering Consulting Services

Exhibit C

Schedule

BASIC SERVICES

SCHEDULE

FY2021-2022

Task 2. Project Kickoff Meeting	14 days from NTP
Task 3. Storm Drain GIS Geodatabase and Collector App	30 days from kickoff meeting
Task 4. Develop Multi-Year Field Inspection Work Plan	45 days from kickoff
Task 5. Perform Field Inspection	from work plan thru Sep 2022
Task 6. Prepare Yearly Assessment Summary and Meeting	Sep 2022

FY2022-2023

Task 2. Annual Coordination Meeting	Oct 2022
Task 5. Perform Field Inspection	Oct 2022 – Sep 2023
Task 6. Prepare Yearly Assessment Summary and Meeting	Sep 2023

FY2023-2024

Task 2. Annual Coordination Meeting	Oct 2023
Task 5. Perform Field Inspection	Oct 2023 – Sep 2024
Task 6. Prepare Yearly Assessment Summary and Meeting	Sep 2024

FY2024-2025

Task 2. Annual Coordination Meeting	Oct 2024
Task 5. Perform Field Inspection	Oct 2024 – Sep 2025
Task 6. Prepare Yearly Assessment Summary and Meeting	Sep 2025
